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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 576

AUBREY HICKENBOTTOM, CLARENCE N.
HUDSON, EARL E. BONSTEEL, F. L.
COFFMAN and HERBERT L. GIPSON

Petitioners

VS.

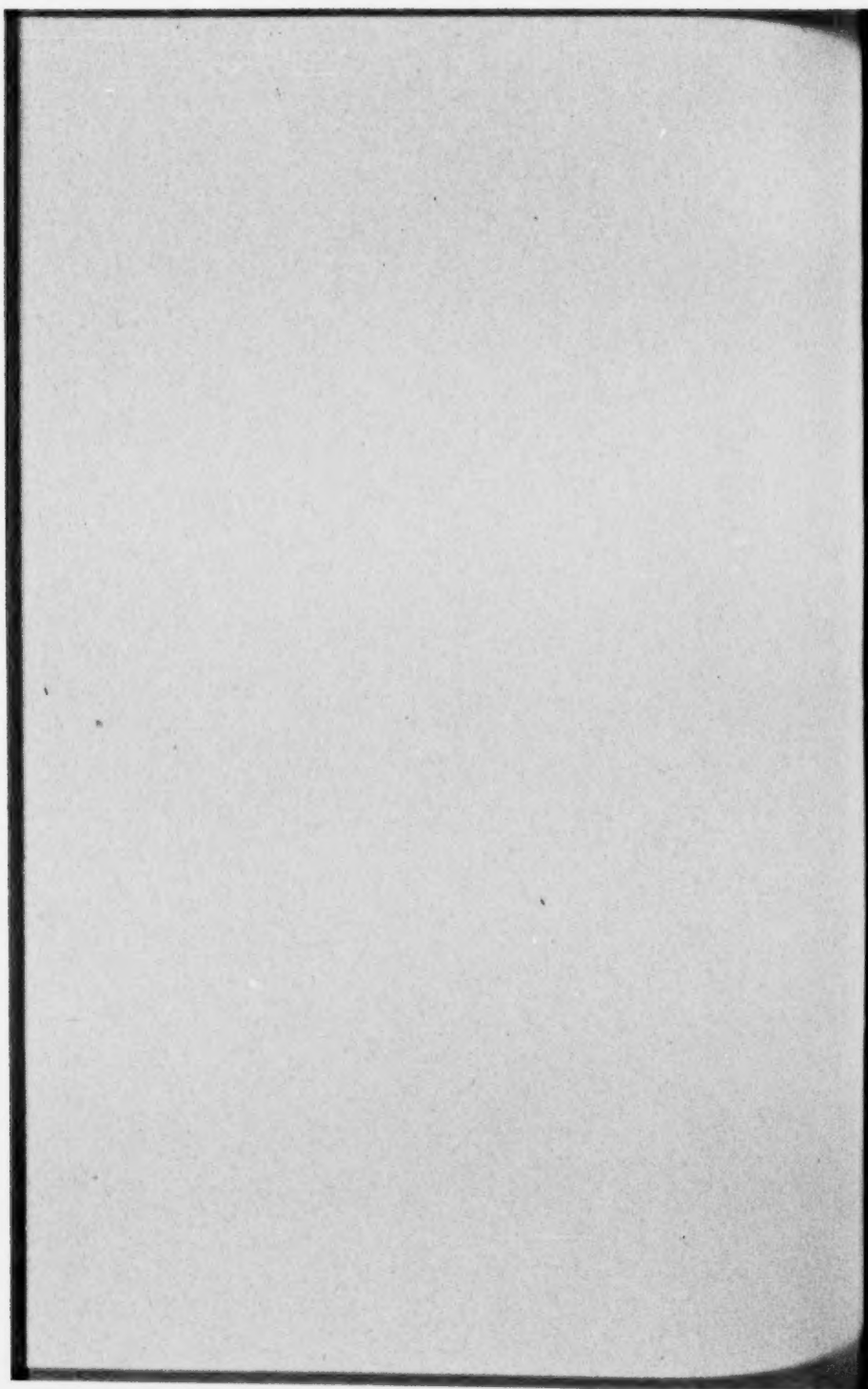
W. J. McCAIN, ROLAND M. SHELTON, ROSS
RICHESIN, Sheriff of Boone County, Arkansas;
EULAN MOORE, Clerk of the Circuit Court of Boone
County, Arkansas and HUGH BURLISON,

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF THE STATE OF ARKANSAS

PETITION FOR REHEARING.

CHARLES M. HAFT,
Attorney for Petitioners



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MAY IT PLEASE THE COURT:

Come now the petitioners herein Aubrey Hickenbottom, Clarence N. Hudson, Earl E. Bonsteel, F. L. Coffman and Herbert L. Gipson and petition the

court to grant unto them a rehearing herein and in support of this petition respectfully show:

That this court in disposing of the vast volume of litigation coming before it must have failed to take note of important and controlling matters as follows:

That Act 161 of 1937 attempts to create a fourth Department of state, styled a Department of Labor.

That Article IV of the constitution of the State of Arkansas provides,

“The powers of the government of the State of Arkansas shall be divided into three distinct departments, each of them to be confined to a separate body of magistracy, to-wit: Those which are legislative to one, those which are executive to another, and those which are judicial to another.”

That Article V of said constitution vests the legislative powers of the state in a General Assembly.

That Article VI of said Constitution provides, “The executive department of the state shall consist of a Governor, Secretary of State, Treasurer of State, Auditor of State and Attorney General **** and the General Assembly may provide for the establishment of the office of commissioner of State Lands.”

Article VII provides how the judicial power of the state shall be vested.

In discussing a somewhat similar matter the court in *State v Martin*, 60 Ark. 343, at page 350, said:

“The idea of two Governors, Secretaries of State, Treasurers, etc., is unknown in the history of the State governments in this republic.” and again the court at page 348 says:

“Its object is to outline the departments of government and apportion its various powers among them.” In speaking of the officers of the Executive department provided for by Section 1 of Article VI the court at page 349 says:

“No one would contend that there could be more than one of each of these functionaries. *** It would be utterly incompatible with the duties of these officers to have a divided department and a head for each. * * * For instance Sec. 2 pro-

vides: The supreme executive power of this state shall be vested in a chief *magistrate* who shall be styled, "the Governor of the State of Arkansas." ***There can be but one chief magistrate, one commander in chief.

In *Staney v. Gates*, 179 Ark., at page 897, the court says:

"The Constitution defines the duties of each department of government." * * *

Again at page 898 the court says:

"The three departments of government are of equal dignity and no one of them can encroach upon the other." We here have a clear statement by the Arkansas court itself that the constitution limits the departments of government to three.

Petitioners further show unto the court that the Arkansas Constitution does not define the duties of a Department of Labor and does not even mention such a department.

That in view of the refusal of the Arkansas Supreme Court to rule upon the constitutionality of Act 161 of 1937, thereby rendering the judgment of said court in violation of the XIV amendment to the Federal Constitution it became the imperative duty of this court to itself make such ruling and a failure so to do would constitute a violation of the V amendment to the Federal Constitution, and at the same time deprive petitioners and thousands of other taxpayers in Arkansas, who are compelled to pay taxes under Act 391 of 1941, of their property without due process of law in violation of the XIV amendment to the Federal Constitution.

Siler vs Louisville and Nashville RR 213 US 175 and cases cited in our reply brief at pages 14, 15, 16 and 17.

Petitioners entertain great fear that their reply brief did not reach the court in time to receive the courts attention and now respectfully ask the court to give it consideration and to particularly to take note of the decisions of this court cited and quoted from as follows:

Lawrence vs State 276 U. S. 281—At page 14 of Reply;

Siler vs Louisville 213 U. S. 175MAt Page 14 of Reply;

Schuylkill vs Pennsylvania 296 U. S. 113—At page 15 of Reply;

Great Northern Railway vs Washington 300 U. S. 154—At page 15 of Reply;

Union Pacific vs Pub. Service Com. 248 U. S. 69—At page 16 of Reply;

Enterprise Irrigation Dist. vs Canal Co. 243 U. S. 164—At page 17 of Reply;

Stanley County vs Caler 190 U. S. 444—At page 17 of Reply.

Wherefore petitioners pray that this court adjudicate,

(1) That the opinion and judgment of the Supreme Court of Arkansas is arbitrary and evasive and violates the XIV amendment to the Federal Constitution:

(2) That Act 161 of 1937 is in violation of Articles IV, V, VI and VII of the Arkansas Constitution and each of them, and is unconstitutional and void.

(3) That Act 391 of 1941 is so interlocked with, and dependent upon, Act 161 of 1937 as to render said Act 391 so incomplete, indefinite, uncertain and meaningless as to render it void.

And petitioners will ever pray.

CHARLES M. HAFT,

Attorney for Petitioners

